

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE UNITE HERE
NATIONAL HEALTH FUND and
TRUSTEES OF THE UNITE HERE
NATIONAL RETIREMENT FUND,

Plaintiffs,

- against -

AMERICAN WIPER AND SUPPLY, CO., a
Division of Abcon Enterprises, Inc.,

Defendant.

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ORDER

09 Civ. 3143 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

On November 19, 2009, this Court entered an order of default against the Defendant in the above captioned matter. (Docket No. 12) The matter was referred to Magistrate Judge Lisa Smith for a report and recommendation ("Report") concerning damages. (Docket Nos. 11, 12) On December 16, 2010, Judge Smith issued the Report (Docket No. 16), recommending that Plaintiff Trustee of the Unite Here National Health Fund ("Health Fund") and Plaintiff Trustee of the Unite Here National Retirement Fund ("Retirement Fund") be awarded:

- (i) principal amount (Health Fund) – \$15,082.74;
- (ii) principal amount (Retirement Fund) – \$346.80;
- (iii) interest (Health Fund) – \$3,770.69, plus additional interest to be calculated by the Clerk of the Court by multiplying the amount of the monthly contribution due to the Health Fund – \$887.22 – by 1% per calendar month or part thereof, times the number of months (including parts thereof), from August 1, 2010, to the date of entry of judgment;
- (iv) interest (Retirement Fund) – \$72.39, plus additional interest to be calculated by the Clerk of the Court by multiplying the amount of the monthly contribution due to the Retirement Fund – \$43.35 – by 1% per calendar month or part thereof, times the number of months (including parts thereof), from August 1, 2010, to the date of entry of judgment;

(v) liquidated damages (Health Fund) – \$3,770.69, plus the amount of additional interest calculated by the Clerk of the Court as set forth

supra;

(vi) liquidated damages (Retirement Fund) – \$72.39, plus the amount of additional interest calculated by the Clerk of the Court as set forth supra; and

(vii) costs – \$350.00.

(Report, at 7-8 (Docket No. 16))

The Report was sent to the parties on December 17, 2010. To date, neither party has filed objections to the Report. The Report recites the requirement that parties must file objections within seventeen days of service, pursuant to Fed. R. Civ. P. 72(b) and Fed. R. Civ. P. 6(a), and the consequences for failure to timely object. If clear notice has been given of the consequences of failure to object, as here, and there are no objections, the Court may adopt the report and recommendation without de novo review. See Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse a failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error, see Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Report’s recommendations are adopted in their entirety and judgment will be entered against Defendant American Wiper and Supply Co. as set forth below.

CONCLUSION

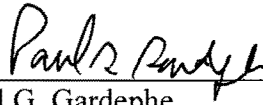
The Clerk of Court shall enter judgment against Defendant American Wiper and Supply Co. for Plaintiffs in the amount of \$23,465.70, plus interest as calculated above. This sum represents the principal amount (\$15,082.74 to Health Fund, \$346.80 to Retirement Fund), interest (\$3,770.69 plus additional interest to Health Fund, \$72.39 plus additional interest to

Retirement Fund), liquidated damages (\$3,770.69 plus additional interest to Health Fund, \$72.39 plus additional interest to Retirement Fund), and costs (\$350).

The Clerk is further directed to close this case. The parties' failure to file written objections precludes appellate review of this decision. See United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997).

Dated: New York, New York
May 2, 2011

SO ORDERED.



Paul G. Gardephe
United States District Judge